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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 1107

GREENHOUSE BROS. & FINKELSTEIN, INC.,
PETITIONER

v.

RECONSTRUCTION FINANCE CORPORATION

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES EMERGENCY COURT OF APPEALS*

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the Emergency Court of Appeals (R. 12-18) is not yet reported.

JURISDICTION

The judgment of the Emergency Court of Appeals was entered on February 5, 1947 (R. 18). The petition for certiorari was filed March 7, 1947. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 204 (d) of the Emergency Price Control Act.

QUESTION PRESENTED

Whether the Defense Supplies Corporation had authority to promulgate a regulation providing that slaughterers owned or controlled, directly or indirectly, by processors or purveyors of meat are not entitled to the subsidy, and to hold that under the regulation a slaughterer owned principally and controlled by three stockholders who also owned and controlled a processor was not entitled to the subsidy.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended, and of the controlling regulations are set forth in the Appendices, *infra*, pp. 14-20.

STATEMENT

In June 1943, as part of the President's hold-the-line policy (E. O. 9328, 8 F. R. 4681), the maximum prices of carcass beef and wholesale cuts of beef, were reduced approximately ten (10) percent. by order of the Economic Stabilization Director (Amendment No. 15 to RMPR 169, 8 F. R. 7675). This reduction was compensated for by subsidy payments made by Defense Supplies Corporation (later Reconstruction Finance Corporation) under its Regulation No. 3 (8 F. R. 10826).

This subsidy was found insufficient adequately to compensate non-processing slaughterers who derived no income apart from the sale of non-processed beef.

The Director of Economic Stabilization, by his directive of October 25, 1943, *infra*, pp. 14-17, therefore, provided for an additional subsidy of eighty (80) cents per cwt. to non-processing slaughterers of beef. It is this subsidy which is involved in this case. The directive stated that "6. Defense Supplies Corporation is directed to amend Regulation No. 3 (Livestock Slaughter Payments) in accordance with this Directive." Five days later, pursuant to this directive, Defense Supplies Corporation amended its subsidy regulation, *infra*, pp. 18-20. The pertinent portions of this amendment read as follows:

Section 14. Extra compensation for non-processing slaughterers of beef.

(a) Definitions.

(1) "Non-processing slaughterer of beef" means an unaffiliated slaughterer as hereinafter defined who during six consecutive months of 1942, sold, and who currently sells, 98% or more, measured in dressed carcass weight, of the total beef produced from cattle slaughtered by him in all his establishments, in the form of carcasses, wholesale cuts, boneless beef or ground beef.

(2) "Unaffiliated slaughterer" means a slaughterer who does not own or control a processor or purveyor of meat, and who is not owned or controlled by a processor or purveyor of meat. "Unaffiliated slaughterer" shall not include any institution, representative or agency of Federal, State, or local governments.

(3) "Processor or purveyor of meat" means a person who processes fresh beef or sells or dispenses fresh or processed meat or products containing meat, at wholesale or at retail, or in a hotel, restaurant or other eating establishment.

(4) "Own or control" means to own or control directly or indirectly a partnership equity or in excess of ten percent of any class of outstanding stock or to have made loans or advances in excess of five percent of the other person's monthly sales.

The petitioner claimed eligibility to receive the subsidy payable under this amendment (R. 3-6). Respondent denied the petitioner's eligibility upon the ground of petitioner's affiliation with a processor or purveyor of meat, basing the determination upon the following findings of fact (R. 1-3):

"II. That Renee Packing Co., Inc. is a processor or purveyor of meat;

* * * * *

IV. That Greenhouse Bros. & Finkelstein, Inc. is owned and controlled by the following officers and stockholders:

Officers: President: Paul Greenhouse; Vice President, Nathan Finkelstein; Sec. & Treas., William Greenhouse.

Stockholders: Total Shares Issued 614.

	<i>Shares</i>
William Greenhouse.....	144
Paul Greenhouse.....	129½
Nathan Finkelstein.....	134½
Rose Greenhouse.....	60
Estabel Greenhouse.....	74

	Shares
Fannie Finkelstein.....	70
Eli Gingold (atty.).....	1
Jessie Hecker.....	1
Total.....	614

V. That Renee Packing Co., Inc. is owned and controlled by the following officers and stockholders:

Officers: President: Eli Gingold; 1st Vice Pres., William Greenhouse; 2nd Vice Pres., Nathan Finkelstein; Sec. & Treas., Paul Greenhouse.

Stockholders: Total Shares Issued 695.

William Greenhouse.....	231%
Paul Greenhouse.....	231%
Nathan Finkelstein.....	231%
Total.....	695

The petitioner thereupon filed a complaint in the Emergency Court of Appeals asking that the regulation and respondent's action thereunder be set aside, and on February 5, 1947, the court below dismissed the complaint (R. 12-18).

ARGUMENT

The petitioner's primary contention is that the subsidy regulation and respondent's determination thereunder unlawfully ignored the corporate entities of the two corporations involved. This contention has heretofore been fully considered in substance and found to be without merit. See *Atlantic Meat Co. v. Reconstruction Finance Corporation*, 155 F. 2d 533 (E. C. A.), certiorari denied October 14, 1946, No. 154 at this Term; *Gibbs*

v. *Defense Supplies Corporation, et al.*, 155 F. 2d 525 (E. C. A.), certiorari denied October 14, 1946, No. 147 at this Term; *Illinois Packing Co. v. Henderson*, 156 F. 2d 1000 (E. C. A.), certiorari denied November 18, 1946, No. 476 at this Term; and *Somerville Dressed Meat Co. v. Reconstruction Finance Corporation*, decided February 5, 1947, Emergency Court of Appeals No. 335.¹

In each of the cited cases the provisions of the subsidy regulation here involved were considered and found valid. The *Atlantic Meat Company* case is particularly pertinent. There, as here, the ownership of the common stock of two corporations by a single owner was the basis for a finding of affiliation within the meaning of the subsidy regulation. In the *Atlantic Meat Company* case, the stock owner was a corporation. Here a group of individuals own a majority of the shares of the stock of one of the corporations and all of the shares of the stock of the other. The Emergency Court of Appeals properly refused to consider this distinction to be one of substance. The facts in the case at bar are more favorable to respondent's position than those in the *Atlantic Meat Company* case, for in the instant case the stock owners are also the principal officers of both

¹ Copies of the opinion are being lodged with the Clerk of this Court.

corporations, while in the *Atlantic* case there was no overlapping of executive personnel.

Petitioner cites the case of *Maloney Packing Company v. Reconstruction Finance Corporation*, decided by the Emergency Court of Appeals on February 5, 1947, No. 334,² in support of its contention. In the *Maloney* case, the stock of one corporation was held by the wife of the owner of the stock of the second corporation. The Emergency Court of Appeals decided that the marital relationship between the respective owners of the two companies was not in and of itself sufficient to support a finding of affiliation, and remanded the matter for further proceedings. No conflict between the Emergency Court of Appeals' rulings in the *Maloney* case and in this case can be found without ignoring the obvious and substantial difference in the facts.

The meat subsidy program was terminated on October 14, 1946 and authority for its renewal does not exist. Whether the problems raised by this case would be presented by any new subsidy program if one should be adopted may well be doubted. The problems presented by this case are not of sufficient importance to warrant further review.

² Copies of the opinion are being lodged with the Clerk of this Court.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

✓ GEORGE T. WASHINGTON,
Acting Solicitor General.

✓ JOHN R. BENNEY,
Attorney.

JAMES L. DOUGHERTY,
General Counsel,

E. A. STANSFIELD,
Assistant General Counsel,

JOHN C. ERICKSON,
Counsel,
Reconstruction Finance Corporation.

APRIL 1947.

APPENDIX A

The pertinent provisions of Section 2 (e) of the Emergency Price Control Act of 1942, 56 Stat. 26, 58 Stat. 632; 59 Stat. 306 (50 U. S. C. App., Supp. V, Sec. 902 (e)), reads as follows:

* * * * *

(e) Whenever the Administrator determines that the maximum necessary production of any commodity is not being obtained or may not be obtained during the ensuing year, he may, on behalf of the United States, without regard to the provisions of law requiring competitive bidding, buy or sell at public or private sale, or store or use, such commodity in such quantities and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof or otherwise to supply the demand therefor, or make subsidy payments to domestic producers of such commodity in such amounts and in such manner and upon such terms and conditions as he determines to be necessary to obtain the maximum necessary production thereof: *Provided*, That in the case of any commodity which has heretofore or may hereafter be defined as a strategic or critical material by the President pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended, such determinations shall be made by the Federal Loan Administrator, with the approval of the President, and, notwithstanding any other provision of this Act or of any existing law, such commodity may be bought or sold, or stored

or used, and such subsidy payments to domestic producers thereof may be paid, only by corporations created or organized pursuant to such section 5d; except that in the case of the sale of any commodity by any such corporation, the sale price therefor shall not exceed any maximum price established pursuant to subsection (a) of this section which is applicable to such commodity at the time of sale or delivery, but such sale price may be below such maximum price or below the purchase price of such commodity, and the Administrator may make recommendations with respect to the buying or selling, or storage or use, of any such commodity: *Provided, however,* That, with the exception of any commodity which prior to the effective date of his amendatory proviso has been defined as a strategic or critical material pursuant to section 5d of the Reconstruction Finance Corporation Act, as amended, no agricultural commodity or commodity manufactured or processed in whole or substantial part from any agricultural commodity intended to be used as food for human consumption, shall, for the purposes of this subsection, be defined as a strategic or critical material pursuant to the provisions of said section 5d of the Reconstruction Finance Corporation Act, as amended. In any case in which a commodity is domestically produced, the powers granted to the Administrator by this subsection shall be exercised with respect to importations of such commodity only to the extent that, in the judgment of the Administrator, the domestic production of the commodity is not sufficient to satisfy the demand therefor. * * *

* * * * *

APPENDIX B

Section 2 (m) of the Emergency Price Control Act, as added by Section 102 of the Stabilization Extension Act of 1944, 58 Stat. 632, 50 U. S. C. App., Supp. V, Sec. 902 (m) reads as follows:

* * * * *

(m) No agency, department, officer, or employee of the Government, in the payment of sums authorized by this or other Acts of Congress relating to the production or sale of agricultural commodities, or in contracts for the purchase of any such commodities by the Government or any department or agency thereof, or in any allocation of materials or facilities, or in fixing quotas for the production or sale of any such commodities, shall impose any conditions or penalties not authorized by the provisions of the Act or Acts, or lawful regulations issued thereunder, under which such sums are authorized, such contracts are made, materials and facilities allocated, or quotas for the production or sale of any such commodities are imposed. Any person aggrieved by any action of any agency, department, officer, or employee of the Government contrary to the provisions hereof, or by the failure to act of any such agency, department, officer, or employee, may petition the district court of the district in which he resides or has his place of business for an order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions hereof and otherwise lawful; and the court shall have jurisdiction to

grant appropriate relief. The provisions of the Judicial Code as to monetary amount involved necessary to give jurisdiction to a district court shall not be applicable in any such case.

APPENDIX C

Section 2 of the Act of June 23, 1945, 59 Stat. 260, c. 193, reads as follows:-

Any slaughterer who heretofore or hereafter shall have received extra compensation payments under Livestock Slaughter Payments Regulation Numbered 3 of Defense Supplies Corporation (adopted pursuant to directives of the Director of Economic Stabilization) when such slaughterer was not in a class eligible for such extra compensation payments, shall be relieved, in whole or in part, of obligations to repay the amount thereof and shall be entitled to receive, in whole or in part, the amount of such extra compensation payments repaid by such slaughterer to, or withheld by Defense Supplies Corporation on account of such extra compensation payments, to the extent that it is determined by the Director of Economic Stabilization, or any agency of the Government authorized by him, that it would be inequitable for Defense Supplies Corporation to require repayment by such slaughterer or to retain the amounts so repaid or withheld, provided such Director or agency also determines that such slaughterer believed reasonably and in good faith that he was eligible to receive such extra compensation payments: *Provided*, That any determination by such Director or agency under this section shall be reviewable by the Emergency Court of Appeals under such rules as such court may prescribe.

APPENDIX D

The directive of the Economic Stabilization Director of October 25, 1943, 8 F. R. 14641, reads as follows:

OFFICE OF ECONOMIC STABILIZATION

LIVESTOCK SLAUGHTER PAYMENTS

This directive is issued pursuant to the authority vested in me by the Act of October 2, 1942, entitled "An Act to amend the Emergency Price Control Act of 1942, to aid in preventing inflation and for other purposes," and by Executive Order No. 9250, October 3, 1942, and Executive Order No. 9328, April 8, 1943.

1. The purposes of this directive are to insure:

(a) That the livestock slaughter payments made with respect to cattle under Regulation No. 3 of Defense Supplies Corporation (Livestock Slaughter Payments) inure to the benefit of cattle producers;

(b) That such payments are made only to the extent necessary to maintain live cattle prices within a range consistent with the purposes of the stabilization and production programs;

(c) That such prices do not impose undue hardship upon any group of slaughterers whose output is needed to obtain the maximum necessary production; and

(d) That the available supplies of live cattle are equitably distributed among slaughterers and feeders.

2. It is hereby determined that the stabilization and production programs require the maintenance of live cattle prices within the following ranges:

Grade:	Price (per cwt., at Chicago)
Choice.....	\$15. 00 to \$16. 00
Good	14. 25 to 15. 25
Medium	12. 00 to 13. 00
Common	10. 00 to 11. 00
Cutter and canner.....	7. 45 to 8. 45
Bologna bulls.....	7.45 to 8. 45

The Price Administrator and the War Food Administrator are directed to determine and publish, and to certify to Defense Supplies Corporation, live cattle prices at points other than Chicago which are in line with the foregoing Chicago prices.

3. There shall be deducted from the live-stock slaughter payments hereafter made to any slaughterer under Regulation No. 3 of Defense Supplies Corporation (Live-stock Slaughter Payments) the net amount, if any, by which the total of the prices paid by such slaughterer for all live cattle purchased during the month for which the payments are made either fell short of the total amount he would have paid at the lower of the applicable prices, or exceeded the total amount he would have paid at the higher of the applicable prices, set forth or provided for in paragraph 2, above.

The grade of live animals purchased by a slaughterer shall be determined on the basis of the carcass grade. The Price Administrator and the War Food Administrator are directed to determine and pub-

lish, and to certify to Defense Supplies Corporation, conversion factors for determining the dressed weight equivalents of live weights.

In the case of slaughterers who operate more than one plant, the amount of the payments and deductions to be made shall be determined separately for each plant.

4. The livestock slaughter payments hereafter made with respect to cattle under Regulation No. 3 of Defense Supplies Corporation (Livestock Slaughter Payments) to any slaughterer whose beef carcasses are graded by an official grader of the Food Distribution Administration shall be revised and computed on a grade basis as follows:

Grade:	Payments per live cwt.
Choice	\$1. 00
Good	1. 45
Medium 90
Common 50
Cutter and Canner 50
Bologna Bull 50

Livestock slaughter payments made to slaughterers whose beef carcasses are not graded by an official grader of the Food Distribution Administration shall remain unchanged.

5. Slaughterers who during the year 1942, or a representative portion thereof, sold and who currently sell 98% or more of the total dressed carcass weight of cattle slaughtered by them in the form of carcasses, wholesale cuts, frozen boneless beef (Army specifications) (carcass equivalent) or ground beef, shall be paid in addition to the payments authorized by Regulation No. 3 of Defense Supplies Corporation (Livestock Slaughter Payments), the

amount of \$0.80 per cwt. of cattle slaughtered during the month for which such payments are made.

6. Defense Supplies Corporation is directed to amend Regulation No. 3 (Livestock Slaughter Payments) in accordance with this Directive.

7. The War Food Administrator is directed as soon as practicable to institute a system of allocation of live cattle to slaughterers and feeders which is adequate to maintain an equitable distribution of available supplies.

8. The Secretary of Commerce is directed to determine on the basis of facts certified by the War Food Administration and the Office of Price Administration whether the effectuation of the expressed purposes of this directive require adjustments in, or additions to, the payments contemplated by this directive because of inequities resulting from differences in transportation costs.

9. This directive shall become effective immediately, except that paragraphs 3 and 4 shall become effective on December 1, 1943, and payments under paragraph 5 shall be made with respect to cattle slaughtered on and after November 1, 1943.

Issued this 25th day of October, 1943.

FRED. M. VINSON,
Director.

APPENDIX E

DEFENSE SUPPLIES CORPORATION AMENDMENT TO MEAT SUBSIDY REGULATION (9 F. R. 1820)

[Reg. 3, Amdt. 2]

PART 7003—LIVESTOCK SLAUGHTER PAYMENTS

EXTRA COMPENSATION FOR NON-PROCESSING SLAUGHTERERS OF BEEF

Pursuant to a directive issued by the Office of Economic Stabilization on October 25, 1943 (8 F. R. 14641), Regulation No. 3 of Defense Supplies Corporation is hereby amended by adding a new § 7003.14, as follows:

§ 7003.14 *Extra compensation for non-processing slaughterers of beef*—(a) *Definitions.* (1) “Non-processing slaughterer of beef” means an unaffiliated slaughterer as hereinafter defined who during six consecutive months of 1942, sold, and who currently sells, 98% or more, measured in dressed carcass weight, of the total beef produced from cattle slaughtered by him in all his establishments, in the form of carcasses, wholesale cuts, boneless beef or ground beef.

(2) “Unaffiliated slaughterer” means a slaughterer who does not own or control a processor or purveyor of meat, and who is not owned or controlled by a processor or purveyor of meat. “Unaffiliated slaughterer” shall not include any institution, representative or agency of Federal, State or local governments.

(3) “Processor or purveyor of meat” means a person who processes fresh beef or sells or dis-

penses fresh or processed meat or products containing meat, at wholesale or at retail, or in a hotel, restaurant or other eating establishment.

(4) "Own or control" means to own or control directly or indirectly a partnership equity or in excess of ten percent of any class of outstanding stock or to have made loans or advances in excess of five percent of the other person's monthly sales.

(5) "Beef" means meat derived from the carcasses of bovine animals which does not qualify as veal as defined in § 1364.470 (a) (3) of Revised Maximum Price Regulation No. 169 issued by the Office of Price Administration.

(6) "Cattle" means bovine animals, slaughter of which results in the production of beef.

(7) "Carcasses" means beef carcasses as defined in § 1364.455 (a) (8) of Revised Maximum Price Regulation No. 169 issued by the Office of Price Administration.

(8) "Wholesale cuts" means beef wholesale cuts as defined in § 1364.455 (a) (9) of Revised Maximum Price Regulation No. 169 issued by the Office of Price Administration.

(9) "Boneless beef" means the dressed carcass equivalent of beef covered by § 1364.452 (l), (m) and (n) of Revised Maximum Price Regulation No. 169 issued by the Office of Price Administration.

(10) "Ground beef" means the dressed carcass equivalent of ground beef as defined in § 1364.452 (p) (4) of Revised Maximum Price Regulation No. 169 issued by the Office of Price Administration.

(b) *Persons eligible for extra compensation.*

Any non-processing slaughterer of beef who files an application for payment under §§ 7003.1 through 7003.5 of this regulation may file a claim for extra compensation on account of cattle slaughtered on and after November 1, 1943, for any accounting period for which he files an application for payment under §§ 7003.1 through 7003.5.

(c) *Filing claims.* (1) Claims for extra compensation shall be filed in the same manner as, for the same period as, and with, the applications for payment provided for in §§ 7003.1 through 7003.5 of this regulation.

(2) If an applicant's accounting period does not begin on November 1, 1943, he may include in his claim for extra compensation for the first full accounting period beginning after November 1, 1943, the cattle slaughtered on and after November 1, 1943 and before the beginning of the next accounting period.

(d) *Payment of claims.* Defense Supplies Corporation will make payment on approved claims for extra compensation at the rate of .8 cents a pound on the same amount of live weight of cattle slaughtered on and after November 1, 1943, on which payments are made to the applicant under §§ 7003.1 through 7003.5 of this regulation. Payments will be made in the same manner and on the same terms as payments of applications under §§ 7003.1 through 7003.11 of this regulation.

(e) This section shall become effective as of November 1, 1943.

Issued this 30th day of October 1943.

GEORGE H. HILL, Jr.,
Executive Vice President.

